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U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington

LOFT BUILDING EMPLOYEES HELD COVERED

Maintenance employees of the owners of loft buildings where tenants are engaged in the production of goods for interstate commerce were held to be covered by the Fair Labor Standards Act in the case of the Wage and Hour Division against A. B. Kirschbaum Company of Philadelphia. The company was enjoined against further violation.

Federal Judge William H. Kirkpatrick held in his opinion that the elevator operators employed by the owner of the building were engaged in interstate commerce and that other maintenance employees were "necessary to the production of goods intended for interstate commerce manufactured by the tenants of the building."

Thousands of scrubwomen, janitors, and watchmen in every state of the Union in loft buildings housing light and heavy manufacturing are entitled to the 30 cents an hour minimum wage and time and a half their regular rate for overtime after 40 hours a week under this construction of the Act. The Act applies to all those employed "in any process or occupation necessary to the production" of goods for interstate commerce.

"It has been the Division's position that such maintenance workers are engaged in occupations necessary to the production of goods which move across State lines, regardless of the fact that they may be paid by the building landlord who himself is not the producer of the goods. Otherwise avenues of evasion of the law would be opened up and its protection would be denied hundreds of workers, many of whom are in the low wage class," General Philip B. Fleming, Wage and Hour Administrator, declared.

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General Fleming was in receipt of the opinion of Judge William H. Kirkpatrick and called attention to these paragraphs:

"The activities of the employees involved in this case are, in my judgment, necessary to the production of the goods intended for interstate commerce manufactured by the tenants of the building, and I so find. The definition of 'necessary' given by Chief Justice Marshall is fairly applicable. 'To employ the means necessary to an end, is generally understood as employing any means calculated to produce the end, and not as being confined to those single means, without which the end would be entirely unattainable.' The employees involved here cannot be excluded from the operation of the Act unless the word necessary is interpreted to mean indispensible. So to do would be to deny a liberal construction to a remedial act, contrary to the fundamental canon for the interpretation of statutes. . . . I find no basis for the defendant's interpretation which in effect would limit the employees subject to the Act to those who work upon or have physical contact with the article which will later move into commerce. . . ."

Referring to the defendant's argument that his employees were exempt as a service establishment, the Judge said:

"Unquestionably, most if not all of the work done by the employees in this case could be properly described as servicing. But the defendant's business is primarily leasing a building for manufacturing purposes. It sells or rents space. In order to promote its business it offers certain services to be rendered by some of its employees. . . . However the defendant's business may be classified, it is not in my opinion a service establishment."

Abner Brodie and Ernest Votaw, attorneys, represented the Administrator in the trial of the case.

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